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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/547,708	04/11/2000	Ashvin Desai	10284	4652

7590

06/19/2003

David H. Jaffer  
Pillsbury Winthrop LLP  
2550 Hanover Street  
Palo Alto, CA 94304-1115

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 06/19/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/547,708

Applicant(s)

DESAI, ASHVIN

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-4, 7-11, 13-15, 19 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 7-11, 19 and 29-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15, 28, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Prosecution Application***

The request filed on 3/17/03 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/547708 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 recites the limitation "said stent *tube*" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13-15,28,33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yachia et al. (5246445) in view of Mikus et al. (5830179). Yachia et al. disclose a stent (Fig. 1c) with a body wall that has a bulbous middle section, proximal and distal end *areas* that have increased diameters. Yachia also discloses the stent can be made from steel with a coating and that the coating can be biodegradable, col. 4, lines 32-43. The stent can be retained in the lumen of the patient and is fully capable of being

removed upon degradation of the biodegradable coating. Yachia additionally discloses the stent is made such that it is collapsible and expandable after insertion, col. 5, lines 50-59. However, Yachia et al. do not disclose the proximal and distal ends to be flared outward and to use a superelastic material for the stent. Mikus et al. teach that stents are flared (Fig. 7) at their proximal and distal ends for anchoring in the lumen of a patient, col. 6, lines 37-39. Mikus also teaches stents can be made of superelastic material, col. 9, lines 15-20. It would have been obvious to one of ordinary skill in the art to incorporate flared ends on the stent as taught by Mikus et al. in the stent of Yachia et al. in order to prevent dislodgement of the stent in the lumen of the patient. It would have been an obvious expedient to use a superelastic material for the stent as taught by Mikus for the stent of Yachia such that a small profile can be used to deliver it to the treatment site and when in the lumen it expands to the memorized shape upon removal of the catheter sheath.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yachia '445 in view of Mikus '179 as applied to claim 33 above, and further in view of Datta et al. (6338739). Yachia et al. as modified by Mikus et al. is explained supra. However, Yachia in view of Mikus do not disclose the stent being made of bioabsorbable material. Datta et al. teach the stent is entirely biodegradable, see abstract. It would have been obvious to one of ordinary skill in the art to use bioabsorbable material as taught by Datta et al. for the stent of Yachia as modified by Mikus such that subsequent surgeries that remove these stents can be avoided and reduces the stiffness of the stent in the lumen, see col. 2, lines 26-40.

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***Response to Arguments***

Applicant's arguments with respect to claim 33 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 9am to 6:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

A handwritten signature in cursive script that reads "Brian E. Pellegrino". The signature is written in dark ink and is positioned above the typed name and date.

Brian E. Pellegrino  
June 13, 2003  
TC 3700, AU 3738